

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MARCUS KEITH MILLER,

Civil No. 04-2823 (ADM/SRN)

Petitioner,

v.

ORDER

STATE OF MINNESOTA,

Respondent.

Marcus Keith Miller, Minnesota Correctional Facility - Oak Park Heights, 5329 Osgood Avenue North, Stillwater, Minnesota, 55082-1117, Petitioner, pro se.

Linda M. Freyer, Assistant Hennepin County Attorney, C-2000 Government Center, Minneapolis, Minnesota, 55487, for Respondent.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Susan Richard Nelson dated May 3, 2005. No objections have been filed to that Report and Recommendation in the time period permitted.

Based on the Report and Recommendation of the Magistrate Judge, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. Petitioner's Motion to Appoint Counsel (Docket No. 13) is **DENIED as moot**;
2. Petitioner's application for habeas corpus relief under 28 U.S.C. § 2254, (Docket No. 1), is **DENIED**; and
3. This action is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 27, 2005

s/Ann D. Montgomery

ANN D. MONTGOMERY
United States District Court Judge